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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 505.

11 Maart 1981.

No. 505.

11 March 1981.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 38 van 1981: Wysigingswet op Geestesgesondheid, 1981.

No. 38 of 1981: Mental Health Amendment Act, 1981.

Act No. 38, 1981

MENTAL HEALTH AMENDMENT ACT, 1981

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Mental Health Act, 1973, so as to insert a definition of "Director-General"; to substitute the definitions of "hospital prison for psychopaths" and "Minister"; to delete the definition of "Secretary"; to substitute certain expressions; and to provide that the State President may determine conditions with which a mentally ill prisoner who has been conditionally discharged from any institution shall comply after the expiration of his imprisonment; for measures where the conditions are not complied with and for the review of such conditions; and for the detention for examination of and report on any person from a state which previously formed part of the Republic; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 24 February 1981.)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 18 of 1973, as amended by section 1 of Act 10 of 1978.

1. Section 1 of the Mental Health Act, 1973 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the insertion after the definition of "court" of the following definition:

"Director-General" means the Director-General: Health, Welfare and Pensions;
 - (b) by the substitution for the definition of "hospital prison for psychopaths" of the following definition:

"hospital prison for psychopaths" means a building or any portion of a building, whether part of a prison or not, which has been set aside and equipped by the Department of **[Prisons]** Justice as an institution for the detention of prisoners who have been certified as psychopaths;
 - (c) by the substitution for the definition of "Minister" of the following definition:

"Minister" means the Minister of Health, Welfare and Pensions, except in sections 28 and 30 to 41 inclusive, where it means the Minister of **[Prisons]** Justice; and
 - (d) by the deletion of the definition of "Secretary".

Amendment of section 30 of Act 18 of 1973.

2. Section 30 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

(7) Whenever it appears to the **[Secretary]** Director-General or to the officer in charge of a prison in which a prisoner under sentence of death is in custody that the

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prisoner is mentally ill to the degree referred to in subsection (1), he shall immediately report the matter to the [Secretary for Justice] Director-General: Justice."

Amendment of section 37 of Act 18 of 1973, as amended by section 4 of Act 10 of 1978.

3. Section 37 of the principal Act is hereby amended by the addition of the following subsection: 5

"(3) The State President may determine conditions with which a mentally ill prisoner who has been conditionally discharged, shall comply after the expiration of the sentence of imprisonment which he is undergoing."

Insertion of section 42A in Act 18 of 1973.

4. The following section is hereby inserted in the principal Act 10 after section 42:

"Detention for examination of and report on person from state which previously formed part of the Republic.

42A. (1) The superintendent of an institution designated by the Director-General may, subject to an agreement between the Government of the Republic and the Government of a state which previously formed part of the Republic, receive into the institution for the purposes of examination of and report on the mental condition of any person who is charged in such a state with murder, attempted murder, rape or assault with intent to do grievous bodily harm. 15 20

(2) The reception of a person in an institution in terms of subsection (1), shall be subject to the production, at the time of such reception, of a warrant purporting to have been signed by a person authorized to sign such warrant in the state in question and which states that a competent court directed in terms of the law of that state that such person be detained in an institution in the Republic for the purposes of examination of and report on his mental condition. 25 30

(3) Such person may under such warrant be detained at such institution for a period not exceeding thirty days, and if such person is in custody when he is so received, he shall, while he is so detained, be deemed to be in the lawful custody of the person or the authority in whose custody he was at the time of such reception. 35

(4) If after examination it is found that such person is not mentally ill, he shall on the expiry of the period of detention referred to in subsection (3) be returned to the state in which the warrant for his detention was issued. 40

(5) If after examination it is found that the person is mentally ill, the superintendent of the institution in which the person was received shall, after completion of the examination, transmit the warrant, together with the report in support of the finding, to the official curator ad liem, whereupon the provisions of this Act shall apply with reference to such a person as if a reception order had been issued in respect of him under Chapter 3. 45 50

(6) When a person referred to in subsection (5), is discharged as a patient, he shall immediately be returned to the state in which the warrant for his detention was issued." 55

Amendment of section 74A of Act 18 of 1973, as inserted by section 7 of Act 10 of 1978.

5. Section 74A of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"If a President's patient or a mentally ill prisoner who has been discharged conditionally under sections 29 and 37 (1), respectively—"; 60

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(b) by the insertion after subsection (1) of the following subsection:

“(1A) If any person referred to in section 37 (3) fails to comply with any condition determined by the State President, the Minister may—

(a) amend or revoke any such condition; or

(b) direct that such person be taken into custody and removed to an institution or place specified in the direction, whereupon he shall be received and detained at such institution or place as if he had been removed thereto under the provisions of Chapter 4.”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) A President’s patient or a mentally ill prisoner who has been discharged conditionally under sections 29 and 37 (1) and any person referred to in section 37 (3), may apply to the Minister that the Minister review the conditions of his discharge or the conditions with which he shall comply after the expiration of the sentence of imprisonment, as the case may be, and the Minister may make any order he deems fit.”.

Amendment of section 74B of Act 18 of 1973, as inserted by section 7 of Act 10 of 1978.

6. Section 74B of the principal Act is hereby amended by the insertion after the word “Health”, wherever it occurs, of the words “Welfare and Pensions”.

Substitution of word “Secretary” in Act 18 of 1973.

7. The principal Act is hereby amended by the substitution for the word “Secretary”, wherever it occurs, of the expression “Director-General”.

Short title.

8. This Act shall be called the Mental Health Amendment Act, 1981.